

## REMARKS

This application has once again been thoroughly reviewed in light of the most recent and final Office Action, the formal objections to several of the claims and the prior art cited in the rejection under 35 U.S.C. §103.

Based upon the amendments made herein and the arguments noted below, reconsideration of the rejection is solicited.

The Examiner has rejected claims 1-17, 19, 23 and 24 as failing to point out and distinctly claim the subject matter which applicants regard as the invention, under 35 U.S.C. 112.

It is noted that claims 5-8, and 10-18 would be allowable if rewritten in independent form and that claims 5, 11, and 15 would be allowable if rewritten to overcome the Section 112 rejection.

The helpful comments by the Examiner regarding certain instances of lack of antecedents have been noted and appropriate amendments have been made herein. In this regard, note that certain language has been removed from claim 1 and incorporated in a new parent claim 25.

Claim 19 has now been cancelled since claim 1 already specifies that the inserts are formed of electrically insulating material.

The Section 112 rejection of Claim 15 for lack of antecedent basis for "the spacer element" is not understood. Such an element is not present in Claim 15 and clarification is requested.

The Examiner has rejected claims 1-4, 9, 23 and 24 as unpatentable under 35 U.S.C. §103(a), applying the patent to Brown et al. taken in view of Fasterding et al.

The Brown patent has already been discussed in the original application. See page 1, lines 16 et seq. (note that EP-B-0 619 852 is the same disclosure). The known prior art rail fastening comprises an elastic clip which extends from a holder which is similar to Claim 1 of the present application.

The elastic clip has several legs, at least one of which extends within a receptacle of the holder which in turn is connected to a concrete sleeper. The holder element in Brown et al, is not detachable from the concrete sleeper. See Figs 6+ of Brown et al. wherein the holder is connected to the concrete sleeper via a stem 50 which is cast into the sleeper. See column 10, lines 44-52. Accordingly, one of the main objects of our invention cannot be accomplished, i.e. replacing the holder in the event of damage thereto as set forth on page 2, lines 15-17 of our disclosure.

In order to insulate the rail in Brown et al. relative to the fixture, it is necessary to that a slide post insulator 7 be placed between the rail and the shoulder 5. This shoulder is the holder or anchoring device (see column 6, lines 51 and 52 and column 6, line 43. Furthermore, for insulating the toe portion 14 of the clip, an insulator 6 is used (column 6, lines 47).

Consequently in Brown *et al.* it is not possible to change out the holder. Additionally, a plurality of elements are necessary to provide insulation. With such a constriction the insulating elements are detachably connected with both the shoulder and the toe portion such that a loosening of the insulators is possible which is disadvantageous.

The above disadvantages are avoided by the present invention wherein the holder is placed into an insert consisting of electrically conductive material, the insert being cast into the concrete sleeper. Hence, loosening of the insulating material is not possible and additional insulating measure are unnecessary.

The secondary citation to Fasterding *et al.* relates to a concrete cross sleeper system. The use of a clamp with several legs of which at least one extends inside of a receptacle is not shown or suggested by this reference. On the other hand, this reference teaches fixing of a rail by means of a clip that has legs running in a guiding plate 7. This requires a screw 9 which acts against the section of the clip resting on the guide plate.

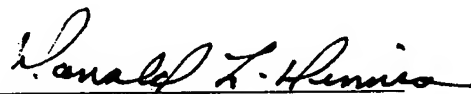
Hence, there is no showing of a receptacle with an insert holding a leg of a clip. In addition, no insert cast in a concrete sleeper and consisting of an electrically conductive material is suggested for receiving a holder. Such an insert is likewise missing for the guide plate 7.

In Applicants' construction, an insert for detachably holding a clip is cast into the concrete sleeper. In the prior art, the screw fixing the clip on the guide plate is screwed into a dowel that is formed of insulating material.

Since no insert for a holder is known in the cited art, the features of claims 2 and 4 are not anticipated since they deal with embodiments of the insert and the geometric adaption of the insert and holder.

In view of the amendments and the remarks noted, *supra*, reconsideration of the rejection of the claims is respectfully solicited with a view to allowance of the application.

Respectfully submitted,



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